

Chapter 208-690 WAC
REGULATION OF MONEY SERVICES PROVIDERS

PART A
DEFINITIONS

New Section. WAC 208-690-010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) “Act” means the Uniform Money Services Act, chapter ____RCW [C287 L 2003]
- (2) “Affiliate” means any person who directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another person.
- (3) “Annual license assessment due date” means the date specified in WAC 208-690-090.
- (4) “Applicant” means a person that files an application for a license under this chapter, including the applicant’s proposed responsible individual and executive officers, and persons in control of the applicant.
- (5) “Audited financial statement,” means a statement prepared by an independent accountant according to generally accepted accounting principles.
- (6) “Authorized delegate” means a person a licensee designates to provide money services on behalf of the licensee. A person that is exempt from licensing under this chapter cannot have an authorized delegate.

(7) “Board director” means a member of the applicant’s or licensee’s board of directors if the applicant is a corporation or limited liability company, or a partner if the applicant or licensee is a partnership.

(8) “Control” means:

- (a) Ownership of, or the power to vote, directly or indirectly, at least twenty-five percent of a class of voting securities or voting interests of a licensee or applicant, or person in control of a licensee or applicant;
- (b) Power to elect a majority of executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or applicant, or person in control of a licensee or applicant;
- (c) Power to exercise directly or indirectly, a controlling influence over the management or policies of a licensee or applicant, or person in control of a licensee or applicant;

(9) “Currency exchange” means exchanging the money of one government for the money of another government, or holding oneself out as able to exchange the money of one government for the money of another government. The following persons are not considered currency exchangers:

- (a) Affiliated businesses that engage in currency exchange for a business purpose other than currency exchange;
- (b) A person who provides currency exchange services for a person acting primarily for a business, commercial, agricultural, or investment purpose when the currency exchange is incidental to the transaction;
- (c) A person who deals in coins or money whose value is primarily determined because it is rare, old, or collectible;
- (d) A person who in the regular course of business chooses to accept from a customer the money of a country other than the United States in order to complete the sale of a good or **service other than**

currency exchange, that may include cash back to the customer, and does not otherwise engage in currency exchange for compensation or gain.

(10) “Currency exchanger” means a person that is engaged in currency exchange.

(11) “Director” means the director of the Department of Financial Institutions.

(12) “Executive officer” means a president, chairperson of the executive committee, chief financial officer, responsible individual, or other individual who performs similar functions.

(13) “Financial institution” means any person doing business under the laws of any state or the United States relating to commercial banks, bank holding companies, savings banks, savings and loan associations, trust companies, or credit unions.

(14) “Licensee” means a person licensed under Chapter____, RCW [the Act].

(15) “Mail” includes electronic mail.

(16) “Material litigation” means litigation that according to generally accepted accounting principles is significant to an applicant’s or licensee’s financial health and would be required to be included in an applicant’s or licensee’s audited financial statements, report to shareholders, or similar records.

(17) “Mobile location” means a vehicle or movable facility where money services are provided

(18) “Money” means a medium of exchange or unit of account that is authorized, adopted or recognized by the United States or a foreign government. “Money” also includes a medium of exchange or unit of account established by an intergovernmental organization or by agreement between two or more governments.

(19) “Money services” means money transmission or currency exchange.

(20) “Money transmission” means receiving money or its equivalent value to transmit, deliver, or instruct to be delivered, the money or its equivalent value to another location, inside or outside the United States, by any means including but not limited to wire, facsimile, or electronic transfer. “Money transmission” does not include the provision solely of connection services to the Internet, telecommunications services, or network services, or network access.

(21) “Money transmitter” means a person that is engaged in money transmission.

(22) “Outstanding money transmission” means the value of all money transmissions reported to the licensee for which the money transmitter has received money or its equivalent value from the customer for transmission, but has not yet completed the money transmission by delivering the money or monetary value to the person designated by the customer.

(23) “Payment instrument” means a check, draft money order, traveler’s check, or other instrument for the transmission or payment of money or its equivalent value, whether or not negotiable. “Payment instrument” does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services.

(24) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture; government, governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

(25) “Principal” means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership, company, corporation, or association, or the owner of a sole proprietorship.

(26) “RCW” means the *Revised Code of Washington*.

(27) “Record” means information that is inscribed on a tangible medium, or that is stored in an electronic or other medium, and is retrievable in perceivable form.

(28) “Responsible individual” means an individual who is employed by a licensee and has principal managerial authority over the provision of money services by the licensee in this state.

(29) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or insular possession subject to the jurisdiction of the United States.

(30) “Stored value” means the recognition of value or credit to the account of persons, when that value or credit is primarily intended to be redeemed for a limited universe of goods, intangibles, services, or other items provided by the issuer of the stored value, its affiliates, or other involved in transactions functionally related to the goods, intangibles, services; or other items sold by the issuer or its affiliates.

(31) “Unsafe or unsound practice” means a practice or conduct by a person licensed or required to be licensed by the Act to provide money services, or an authorized delegate of such a person, which creates the likelihood of material loss, insolvency, or dissipation of the licensee’s assets, or otherwise materially prejudices the financial condition of the licensee or the interests of its customers.

PART B

APPLICATION OF THE ACT

New Section. WAC 208-690-020 Application. The Act and these rules apply only to the activities of money transmission and currency exchange, as defined in the Act and these rules. These definitions focus on activities engaged in rather than the entity that engages in them. Section 4 of the Act lists certain exclusions. As a general rule, there is no attempt to include in the application of the Act and these rules those financial activities that are otherwise regulated and involve the transfer of money or its equivalent value as an ancillary or incidental part of the core activity. The target of the Act and these regulations is money transmission and currency exchange as stand-alone for-profit services.

A person who obtains a license to engage in money transmission may provide currency exchange services without obtaining a separate currency exchange license.

PART C

LICENSING

New Section. WAC 208-690-030 License application. Each person required to have a money transmission or currency exchange license must apply to the director by filing:

- (1) A completed application in the form prescribed by the director;
- (2) For the responsible individual and principal(s):
 - (a) biographical information, including employment history for the immediate previous five years;
 - (b) a personal credit report from a recognized independent credit-reporting agency;
 - (c) a signed authorization for a background investigation on a form prescribed by the director.

- (3) If the application is for money transmission, a surety bond as required by WAC 208-690-040;
- (4) A non-refundable application fee as prescribed by WAC 208-690-130(1). The application fee is not refundable.
- (5) An initial license fee as prescribed by WAC 208-690-130(2). The initial license fee will be refunded if the license application is denied or withdrawn.
- (6) For each authorized delegate, the business name, including any additional names by which the business may be known, the business address and the name of the primary contact person. If an authorized delegate provides money services at more than one location the business address of each such location must be provided.
- (7) A full description of the screening process used by the applicant in selecting authorized delegates, including any sample forms used, and a sample of the contract which the applicant uses to establish the legal relationship of authorized delegate
- (8) If the applicant is a money transmitter, a certification that the applicant's investment portfolio includes only permissible investments under RCW___ and ___ [sections 22 and 23 of the Act].

New Section. WAC 208-690-040 Surety Bond.

- (1) Each money transmitter licensee shall annually file and maintain a surety bond as required by RCW____[Sec. 7 of the Act], issued by a company authorized to do surety business in this state as a surety. The surety may not be a wholly owned subsidiary or affiliate of the applicant or licensee.

- (2) The penal sum of the bond shall be calculated annually according to the following schedule:

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- (a) \$10,000 if the applicant or licensee had money transmission receipts of less than one million dollars for the previous twelve months, including applicants who have not previously engaged in providing money transmission services.
- (b) \$20,000 if the applicant or licensee had money transmission receipts of at least one million but less than two million dollars for the previous twelve months.
- (c) \$30,000 if the applicant or licensee had money transmission receipts of at least two million but less than three million dollars for the previous twelve months.
- (d) \$40,000 if the applicant or licensee had money transmission receipts of at least three million but less than four million dollars for the previous twelve months.
- (e) \$50,000 if the applicant or licensee had money transmission receipts of four million dollars or more for the previous twelve months.

In addition to these amounts the penal sum of the bond is increased by \$10,000 for each additional location where that applicant provides money services, including each location of authorized delegates, up to a maximum total amount of \$500,000.

New Section. WAC 208-690-050 Increase of Security. The director may increase the amount of security required, to a maximum of \$1,000,000, if the financial condition of a money transmitter licensee so requires.

The director shall consider, without limitation, the following criteria:

- (1) Significant reduction of net worth.
- (2) Financial losses.
- (3) Potential losses resulting from violations of Chapter____, RCW, [the Act] or these rules;
- (4) Licensee filing for bankruptcy.
- (5) The initiation of license revocation proceedings against the licensee in any state or foreign country.
- (6) The filing of a state or federal criminal indictment against the licensee, key officer, board director or principal, based on conduct related to providing money services or money laundering.
- (7) A licensee, executive officer, board director, or principal being convicted of a crime.

- (8) The safety and soundness of the licensee.
- (9) Other events and circumstance that, in the judgment of the director, impair the ability of the licensee to meet its obligations to its money services customers.

New Section. WAC 208-690-060 Net Worth.

A money transmitter applicant or licensee must demonstrate a net worth of at least the amounts set forth in the following schedule:

- (a) \$10,000 if the applicant has not previously engaged in the provision of money services, or it had money transmission receipts of less than one million dollars for the previous twelve months.
- (b) \$20,000 if the applicant or licensee had money transmission receipts of at least one million dollars but less than two million dollars for the previous twelve months;
- (c) \$30,000 if the applicant or licensee had money transmission receipts of at least two million dollars but less than three million dollars for the previous twelve months;
- (d) \$40,000 if the applicant or licensee had money transmission receipts of at least three million dollars but less than four million dollars for the previous twelve months; or
- (e) \$50,000 if the applicant or licensee had money transmission receipts of four million dollars or more for the previous twelve months.

Determinations of net worth must be made according to generally accepted accounting principles.

New Section. WAC 208-690-070 License Denial, Suspension, Revocation.

- (1) Director may deny a money services license if the director determines that:
 - (a) The application is incomplete;
 - (b) The surety bond, or net worth requirements of WAC 208-690-040 through WAC 208-690-060 have not been met;
 - (c) The general fitness and character requirements of RCW ____ and ____ [Sec. 9 and 12 of the Act] have not been met as demonstrated by any of the following findings:

- (i) The applicant or licensee, an executive officer, proposed responsible person, board director or person in control has been convicted of any felony within the past 10 years;
 - (ii) The applicant or licensee, an executive officer, proposed responsible person, board director or person in control has been convicted of a crime involving a financial transaction within the past 10 years;
 - (iii) The applicant or licensee, an executive officer, proposed responsible person, board director or person in control has charges pending against him/them for violations relating to a financial transaction(s) within the past 10 years;
 - (iv) The applicant or licensee, an executive officer, proposed responsible person, board director, or person in control has falsified any information supplied in connection with the application;
 - (v) The applicant or licensee, or any delegate thereof, has had an adverse action taken against any business license related to providing financial services by a jurisdiction within the United States within the past 3 years.
- (d) The applicant or licensee, or any delegate thereof, fails to respond to a request for information from the director within 15 days of a third request for the same information.
- (e) The applicant or licensee has failed to register with the United States Department of the Treasury as required by 31 USC Section 5330.
- (f) The applicant or licensee, an executive officer, proposed responsible individual, board director, or person in control is listed on the specially designated nationals and blocked persons list prepared by the United States department of the treasury as a potential threat to commit terrorist acts or to finance terrorist acts.

(2) In lieu of denying an application as authorized by any of the findings in subsection (1) of this section, the director may suspend processing that application if the director determines that the condition requiring denial may be temporary and resolved satisfactorily within a reasonable period of time. The director may

resume processing the application if the director determines that a favorable resolution of the disqualifying condition has occurred.

(3) The director may revoke or suspend a license and issue an order to cease and desist operations as a money services licensee if another jurisdiction initiates an adverse action against the money services license of the licensee, or upon finding any condition or fact that would have led to denial of a license if known by the director during the processing of the application.

PART D

RECORDKEEPING AND REPORTING REQUIREMENTS

New Section. WAC 208-690-080 Audited annual financial statement. A licensee is required to have an audited financial statement prepared annually in accordance with generally accepted accounting principles.

New Section. WAC 208-690-090 Annual Report and Annual Assessment. A form for the preparation of the annual report and license assessment will be mailed to each licensee annually and made available by electronic transmission. The licensee must submit its completed annual report and annual license assessment fee prescribed by WAC 208-690-140 no later than July 1, or the next business day when/if July 1 is a holiday or weekend. The report shall include the following:

(1) A copy of the licensee's most recent audited annual financial statement or, if the licensee is a wholly owned subsidiary of another corporation, the most recent audited consolidated annual financial statement of the parent company.

- (2) A description of each material change, as defined by WAC 208-690-110, to information submitted by the licensee in its original license application, which has not been previously reported to the director on any required report.
- (3) A list of current authorized delegates as prescribed by WAC 208-690-030(6).
- (4) If the licensee is a money transmitter, a certification that the licensee's investment portfolio includes only permissible investments under RCW _____ and _____[Sections 22 and 23 of the Act].
- (5) If the licensee is a money transmitter, proof that the licensee continues to maintain an adequate surety bond and net worth as required by WAC 208-690-040 through WAC 208-690-060.

New Section. WAC 208-690-100 Late Penalty.

- (1) If a licensee fails to submit the required annual report, or license assessment fee by July 1, the director shall send the licensee a notice of suspension and assess a penalty equal to ten percent of the license assessment fee. If the delay exceeds thirty days, the director shall send a notice to the licensee that its license has expired and that the licensee must pay a penalty equal to twenty-five percent of the annual assessment fee. If either of these deadlines occurs on a day that is not a business day, the deadline shall be the next business day.
- (2) The director may reinstate an expired license under this section if, within twenty days after the effective date of the expiration, the licensee:
 - (a) Files the complete annual report and pays both the annual license assessment and the late fee; and
 - (b) The licensee did not engage in providing money services during the period its license was expired.

New Section. WAC 208-690-110 Material Change. Material changes of any of the items required to be included in the licensee's application must be reported to the director within thirty days of the occurrence of

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the change. “Material change” means any change that is not trivial, and that, if not reported, would cause an investigation or examination to be misled or delayed. Such a change would include, but not be limited to changing the physical and/or mailing address, responsible individual, licensee’s name or DBA (Doing Business As), and other similar activities.

New Section. WAC 208-690-120 Change of Authorized Delegates -- Locations. A licensee shall file with the director any change in its roster of authorized delegates, or any change in locations where money services are provided, including mobile locations, and the fee required by WAC 208-690-150, within forty five days after the end of each fiscal quarter. If there is no change in the roster of authorized delegates or locations where money services are provided during a fiscal quarter, no filing is required.

PART E

FEEES

New Section. WAC 208-690-130 License Fees.

(1) A non-refundable license application fee of \$500 shall be paid by each license applicant, plus \$50 for each additional location where the licensee or an authorized delegate will provide money services, up to a maximum of \$8,000.

(2) An applicant shall pay an initial license fee of \$500, plus \$50 for each additional location where the applicant or an authorized delegate will provide money services, up to a maximum of \$8,000. This initial license fee is refundable if the application is denied.

New Section. WAC 208-690-140 License Assessment. A licensee shall pay an annual license assessment of \$500 plus \$50 for each additional location where the licensee or an authorized delegate provides money services, up to a maximum of \$8,000.

New Section. WAC 208-690-150 Transaction fee. A fee of \$30 shall be paid by a licensee for the administrative costs connected with processing a change of a licensee's address or name, or a change in control of a licensee, a change in responsible individual, or changes in the identity or location of authorized delegates, or other material changes.

New Section. WAC 208-690-160 Late Fees. A late fee of ten percent of the annual license assessment will be added to the assessment if the annual report and license assessment are not submitted by July 1. If the delay exceeds thirty days the late fee is increased to twenty-five percent of the annual license assessment. If either of these deadlines occurs on a day that is not a business day, the deadline will be the next business day.

New Section. WAC 208-690-170 Investigation and Examination Fee. The director will collect fees for investigation and examination services of \$75 per hour, including the following services:

- (1) The review and attendant investigation of changes in control, changes in the responsible individual, changes in the identity or location of authorized delegates, and other material changes.
- (2) The review and attendant investigation of permissible investments of the licensee.
- (3) Any examination of the licensee's books, records and files deemed necessary by the director.